IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9160 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SAHDEVSINH LAYAKSINH TOMAR

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR UDAY BHATT Ld. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 12/10/2000

ORAL JUDGEMENT

1. The petitioner-detenu has, by filing this writ petition under Article 226 of the Constitution of India, challenged the legality and validity of an order of detention dated 30.6.2000, Annexure-A, in respect of petitioner passed by respondent no. 2 in respect to

detenu in exercise of his powers conferred on him under Sec. 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short 'the Act').

2. As per the papers of grounds of detention, the petitioiner-detenu is a 'bootlegger' and that his activities are prejudicial to the maintenance of public order. Before passing an order of detention, to arrive at a subjective satisfaction, the detaining authority has placed reliance on 1 prohibition case registered in Gomtipur POlice Station on 14.4.2000, of which reference is there in the grounds of detention, Annexcure-B. He has also placed reliance on the statements of two anonymous witnesses, whose identity has not been disclosed by claiming privilege under sec. 9(2) of the Act. As per the papers, the said statements were verified by detaining authority on 29.6.2000 and on the very next day, the detaining authority passed an order of detention, which is challenged in this writ petition.

3. Though rule has been served upon all the respondents, they have not filed affidavits-in-reply, in reply to main petition controverting the grounds of attack mentioned in the petition.

4. Mr MR Prajapati learned advocate for the petitioner has argued that looking to the dates of statements, date of verification of such statements and date of order of detention, it is quite clear that the detaining authority has claimed privilege not according to law. He has cited an authority of Kalidas Chandubhai Kahar vs. State of Gujarat & Ors., reported in 1993 (2) GLR 1659, wherein it has been held that the detaining authority is expected to do some exercise before actually exercising the privilege under sec. 9(2) of the Act. The present case is squarely falls within the four corners of the case cited by Mr. Prajapti.

5. In view of what is stated hereinabove, this petition is allowed. The impugned order of detention dated 30.6.2000 passed by respondent no. 2 in respect of detenu is set aside. The detenu is ordered to be released forthwith, if he is not required to be detained in any custody for any criminal case or proceedings. Rule is made absolute. Direct service permitted.

(H.H. MEHTA, J.)
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